THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 1153 of 2001.
(Old FAFO No. 653 of 1998)

Jot Sing, Son of Bagatwar Singh, Resident of village Kandi,
Patti Bachhan, Suin, District Pauri Garhwal (Claimant).
… **Appellant**

Vs.

1. Rameswar Prasad.
2. New India Insurance Company Limited through its Branch Manager, Pauri, District Pauri Garhwal.

…**Respondents.**

Sri Rakesh Thapliyal, learned counsel for the appellant.
Sri M.K.Goel, Adv., learned counsel for the Insurance Company-respondent.

Date June 26, 2006

P.C.: Hon'ble B.S. Verma, J.

The present appeal under Section 173 of the Motor Vehicles Act 1988 ***(for short the new Act)*** is directed against the judgment and award dated 12.9.1997 passed by then Motor Accident Claims Tribunal Pauri **(*for short the Tribunal*)** passed in Claim Petition No. 42 of 1996, Jot Singh Vs. Rameswar Prasad and another, whereby a compensation of 25,000/- was awarded to the claimant and it was directed that in case amount in not paid within a period of two months, the Insurance Company shall also be liable to pay interest @ 18% per annum.

Relevant facts necessary for a just decision of appeal are that on 26.4.1996 at about 6.30 a.m. a vehicular accident occurred involving Jeep No. UTS-780 which was driven rashly and negligently by its driver, near Seepri Bend on Khankhra (Bara)-Kandai Road, District Pauri, several students including Km. Sampati lost their lives and some suffered injuries. The parents of the deceased preferred separate claim petitions before the learned Tribunal. The opposite parties, owner of the vehicle and insurer

both contested the claim petitions and filed their written statements. Negligence on the part of the driver of the jeep in question was denied. It was contested by the owner that the driver was having valid driving licence and there was no violation of policy conditions, while the insurer had contended that the vehicle was not driven as per terms and conditions of the policy, therefore, insurer was not liable for compensation.

The learned Tribunal framed necessary issues, recorded the evidence led by the parties, heard them and after perusing the evidence on record, it was held that due to motor accident in question the occupants of the jeep suffered either fatal injuries or grievous injuries involving Jeep No. UTS-780 due to rash and negligent driving by its driver. It was also held that the driver was having driving licence. It was further held that the insurance company was liable to pay compensation. Ultimately, after considering the facts and circumstances of each case, impugned award was made by the Tribunal.

It is pertinent to mention that the learned Tribunal decided as many as 15 claim petitions, namely, Claim Petition Nos. 41 of 1996, Smt. Shyama Devi and another Vs. New India Insurance Company and another, 42 of 1996, Jot Singh Vs. New India Insurance Company and another,***(present case),*** 43 of 1996, Chintamani Vs. Rameshwar Prasad and another, 44 of 1996, Madan Singh Vs. Rameshwar Prasad and another, 45 of 1996, Hayat Singh Vs. Rameshwar Prasad and another, 46 of 1996, Ram Prasad Vs Rameshwar Prasad and another, 47 of 1996, Madan Singh Vs. Rameshwar Prasad and another, 48 of 1996, Budhi Ram Vs. Rameshwar Prasad and another, 49 of 1996, Shiv Singh Vs. Rameshwar Prasad and another, 50 of 1996, Shiv Singh Vs. Rameshwar Prasad and another, 52 of 1996 Ramesh Chandra Vs. Rameshwar Prasad and another, 53 of 1996 Smt. Sushila Devi Vs. Rameshwar Prasad and another, 54 of 1996 Jaspal Singh Vs.

Rameshwar Prasad and another, 59 of 1996 Smt Rameshwari Vs. Rameshwar Prasad and another and 69 of 1996 Prem Dutt Vs. Rameshwar Prasad and another, by a common judgment.

The impugned award has been assailed mainly on the ground that the learned Tribunal fell into error by taking into consideration the amount paid towards ex-gratia payment by the State Government to the claimant and after having adjusted the amount aforesaid, the Tribunal awarded compensation of Rs. 25,000/- to the claimant-appellant. The learned counsel submitted that in fact the Tribunal held the claimant entitled to compensation of Rs. 75,000/- and since ex-gratia payment had been made, the final compensation was assessed at Rs. 25,000/-. It was also pressed that there is no provision under the Act by which the amount of ex-gratia payment ought to have been adjust inasmuch as ex-gratia payment was neither made by the owner nor insurer of the vehicle.

I have heard rival contention of the parties and perused the evidence on record including the impugned award.

The argument of the learned counsel for the appellant that the learned Tribunal intended to have awarded amount of Rs.75,000/- as compensation but for ex-gratia payment the same has been computed Rs. 25,000/- is acceptable.

The learned Tribunal in paragraph no. 18 has observed as under:-

“Km. Sampati was aged about 13 years old (Claim Petition No. 42/1996), Km. Anita was about 17 years old (Claim Petition No. 48/1996), Bharat Singh was about 14 years old (Claim Petition No. 49/1996), Dinesh Singh was about 16 years old (Claim Petition No. 54/1996) had died in this accident. Exgratia payment of Rs.50,000/- was made to them. Looking into the above facts and

circumstances, I am of the opinion that besides the above exgratia payment Rs.25,000/-(Rs. Twenty five thousand) each should be awarded on account of the death of the above deceased to the claimants."

It appears that the learned Tribunal, while awarding amount of Rs. 25,000/- as compensation for the death of Km. Sampati and others, who lost their lives in the motor vehicle accident, ex-gratia payment received by the claimant was considered as a factor for determination of compensation under the Act, which was not proper. The record reveals that the deceased Sampati was aged only 13 years and a student, therefore, she was not an earning member. Therefore, by taking the aid of Second Schedule of Section 163-A of the Act coupled with the facts and circumstances of this case, amount of Rs. 75,000/- will be a just and proper compensation for death of Km. Sampati. I hold accordingly.

In this case, the learned Tribunal has awarded penal interest @ 18% per annum in case of failure to make payment by the insurance company within a period of two months. It is not proper. Rider of interest has to put pressure on the person liable to pay the compensation, therefore, it will be in the fitness of things that the simple interest @ 9% per annum from the date of claim petition till payment is awarded to the claimant. Accordingly, the claimant-appellant shall also be entitled to interest @ 9% per annum from the date of claim petition, i.e. from 24.1.1989 till payment.

In view of the discussion above, the appeal deserves to be partly allowed and the impugned award deserves to be modified to the extent that claimant-appellant is entitled to compensation of Rs. 75,000/- instead of Rs. 25,000/- along with interest as mentioned above.

The appeal is partly allowed. The impugned award dated 12-9-1997 is modified to the extent that claimant Jot Singh is entitled to get compensation of ***Rs. 75,000/-*** (seventy-five thousand) instead of ***Rs.25,000/-***, as awarded by the Tribunal along with simple interest @ 9% per annum from 24-1-1989 till the date of payment by the Insurance Company. In the circumstances of the case, no order as to costs.

(B.S.Verma, J.)

RCP